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HOUSE BILL 2560

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State of Washington

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2008 Regular Session

By Representatives VanDeWege, Kessler, Cody, Morrell, Rolfes, Chase, Barlow, Green, and Loomis

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1 AN ACT Relating to defining small employers for purposes of health  
2 insurance coverage; and reenacting and amending RCW 48.43.005.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 48.43.005 and 2007 c 296 s 1 and 2007 c 259 s 32 are  
5 each reenacted and amended to read as follows:

6 Unless otherwise specifically provided, the definitions in this  
7 section apply throughout this chapter.

8 (1) "Adjusted community rate" means the rating method used to  
9 establish the premium for health plans adjusted to reflect actuarially  
10 demonstrated differences in utilization or cost attributable to  
11 geographic region, age, family size, and use of wellness activities.

12 (2) "Basic health plan" means the plan described under chapter  
13 70.47 RCW, as revised from time to time.

14 (3) "Basic health plan model plan" means a health plan as required  
15 in RCW 70.47.060(2)(e).

16 (4) "Basic health plan services" means that schedule of covered  
17 health services, including the description of how those benefits are to  
18 be administered, that are required to be delivered to an enrollee under  
19 the basic health plan, as revised from time to time.

1 (5) "Catastrophic health plan" means:

2 (a) In the case of a contract, agreement, or policy covering a  
3 single enrollee, a health benefit plan requiring a calendar year  
4 deductible of, at a minimum, one thousand seven hundred fifty dollars  
5 and an annual out-of-pocket expense required to be paid under the plan  
6 (other than for premiums) for covered benefits of at least three  
7 thousand five hundred dollars, both amounts to be adjusted annually by  
8 the insurance commissioner; and

9 (b) In the case of a contract, agreement, or policy covering more  
10 than one enrollee, a health benefit plan requiring a calendar year  
11 deductible of, at a minimum, three thousand five hundred dollars and an  
12 annual out-of-pocket expense required to be paid under the plan (other  
13 than for premiums) for covered benefits of at least six thousand  
14 dollars, both amounts to be adjusted annually by the insurance  
15 commissioner; or

16 (c) Any health benefit plan that provides benefits for hospital  
17 inpatient and outpatient services, professional and prescription drugs  
18 provided in conjunction with such hospital inpatient and outpatient  
19 services, and excludes or substantially limits outpatient physician  
20 services and those services usually provided in an office setting.

21 In July 2008, and in each July thereafter, the insurance  
22 commissioner shall adjust the minimum deductible and out-of-pocket  
23 expense required for a plan to qualify as a catastrophic plan to  
24 reflect the percentage change in the consumer price index for medical  
25 care for a preceding twelve months, as determined by the United States  
26 department of labor. The adjusted amount shall apply on the following  
27 January 1st.

28 (6) "Certification" means a determination by a review organization  
29 that an admission, extension of stay, or other health care service or  
30 procedure has been reviewed and, based on the information provided,  
31 meets the clinical requirements for medical necessity, appropriateness,  
32 level of care, or effectiveness under the auspices of the applicable  
33 health benefit plan.

34 (7) "Concurrent review" means utilization review conducted during  
35 a patient's hospital stay or course of treatment.

36 (8) "Covered person" or "enrollee" means a person covered by a  
37 health plan including an enrollee, subscriber, policyholder,

1 beneficiary of a group plan, or individual covered by any other health  
2 plan.

3 (9) "Dependent" means, at a minimum, the enrollee's legal spouse  
4 and unmarried dependent children who qualify for coverage under the  
5 enrollee's health benefit plan.

6 ~~(10) ("Eligible employee" means an employee who works on a full-~~  
7 ~~time basis with a normal work week of thirty or more hours. The term~~  
8 ~~includes a self-employed individual, including a sole proprietor, a~~  
9 ~~partner of a partnership, and may include an independent contractor, if~~  
10 ~~the self-employed individual, sole proprietor, partner, or independent~~  
11 ~~contractor is included as an employee under a health benefit plan of a~~  
12 ~~small employer, but does not work less than thirty hours per week and~~  
13 ~~derives at least seventy five percent of his or her income from a trade~~  
14 ~~or business through which he or she has attempted to earn taxable~~  
15 ~~income and for which he or she has filed the appropriate internal~~  
16 ~~revenue service form. Persons covered under a health benefit plan~~  
17 ~~pursuant to the consolidated omnibus budget reconciliation act of 1986~~  
18 ~~shall not be considered eligible employees for purposes of minimum~~  
19 ~~participation requirements of chapter 265, Laws of 1995.~~

20 ~~(11))~~ "Emergency medical condition" means the emergent and acute  
21 onset of a symptom or symptoms, including severe pain, that would lead  
22 a prudent layperson acting reasonably to believe that a health  
23 condition exists that requires immediate medical attention, if failure  
24 to provide medical attention would result in serious impairment to  
25 bodily functions or serious dysfunction of a bodily organ or part, or  
26 would place the person's health in serious jeopardy.

27 ~~((12))~~ (11) "Emergency services" means otherwise covered health  
28 care services medically necessary to evaluate and treat an emergency  
29 medical condition, provided in a hospital emergency department.

30 ~~((13))~~ (12) "Enrollee point-of-service cost-sharing" means  
31 amounts paid to health carriers directly providing services, health  
32 care providers, or health care facilities by enrollees and may include  
33 copayments, coinsurance, or deductibles.

34 ~~((14))~~ (13) "Grievance" means a written complaint submitted by or  
35 on behalf of a covered person regarding: (a) Denial of payment for  
36 medical services or nonprovision of medical services included in the  
37 covered person's health benefit plan, or (b) service delivery issues  
38 other than denial of payment for medical services or nonprovision of

1 medical services, including dissatisfaction with medical care, waiting  
2 time for medical services, provider or staff attitude or demeanor, or  
3 dissatisfaction with service provided by the health carrier.

4 ~~((15))~~ (14) "Health care facility" or "facility" means hospices  
5 licensed under chapter 70.127 RCW, hospitals licensed under chapter  
6 70.41 RCW, rural health care facilities as defined in RCW 70.175.020,  
7 psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes  
8 licensed under chapter 18.51 RCW, community mental health centers  
9 licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment  
10 centers licensed under chapter 70.41 RCW, ambulatory diagnostic,  
11 treatment, or surgical facilities licensed under chapter 70.41 RCW,  
12 drug and alcohol treatment facilities licensed under chapter 70.96A  
13 RCW, and home health agencies licensed under chapter 70.127 RCW, and  
14 includes such facilities if owned and operated by a political  
15 subdivision or instrumentality of the state and such other facilities  
16 as required by federal law and implementing regulations.

17 ~~((16))~~ (15) "Health care provider" or "provider" means:

18 (a) A person regulated under Title 18 or chapter 70.127 RCW, to  
19 practice health or health-related services or otherwise practicing  
20 health care services in this state consistent with state law; or

21 (b) An employee or agent of a person described in (a) of this  
22 subsection, acting in the course and scope of his or her employment.

23 ~~((17))~~ (16) "Health care service" means that service offered or  
24 provided by health care facilities and health care providers relating  
25 to the prevention, cure, or treatment of illness, injury, or disease.

26 ~~((18))~~ (17) "Health carrier" or "carrier" means a disability  
27 insurer regulated under chapter 48.20 or 48.21 RCW, a health care  
28 service contractor as defined in RCW 48.44.010, or a health maintenance  
29 organization as defined in RCW 48.46.020.

30 ~~((19))~~ (18) "Health plan" or "health benefit plan" means any  
31 policy, contract, or agreement offered by a health carrier to provide,  
32 arrange, reimburse, or pay for health care services except the  
33 following:

34 (a) Long-term care insurance governed by chapter 48.84 RCW;

35 (b) Medicare supplemental health insurance governed by chapter  
36 48.66 RCW;

37 (c) Coverage supplemental to the coverage provided under chapter  
38 55, Title 10, United States Code;

1 (d) Limited health care services offered by limited health care  
2 service contractors in accordance with RCW 48.44.035;

3 (e) Disability income;

4 (f) Coverage incidental to a property/casualty liability insurance  
5 policy such as automobile personal injury protection coverage and  
6 homeowner guest medical;

7 (g) Workers' compensation coverage;

8 (h) Accident only coverage;

9 (i) Specified disease or illness-triggered fixed payment insurance,  
10 hospital confinement fixed payment insurance, or other fixed payment  
11 insurance offered as an independent, noncoordinated benefit;

12 (j) Employer-sponsored self-funded health plans;

13 (k) Dental only and vision only coverage; and

14 (l) Plans deemed by the insurance commissioner to have a short-term  
15 limited purpose or duration, or to be a student-only plan that is  
16 guaranteed renewable while the covered person is enrolled as a regular  
17 full-time undergraduate or graduate student at an accredited higher  
18 education institution, after a written request for such classification  
19 by the carrier and subsequent written approval by the insurance  
20 commissioner.

21 ~~((+20+))~~ (19) "Material modification" means a change in the  
22 actuarial value of the health plan as modified of more than five  
23 percent but less than fifteen percent.

24 ~~((+21+))~~ (20) "Preexisting condition" means any medical condition,  
25 illness, or injury that existed any time prior to the effective date of  
26 coverage.

27 ~~((+22+))~~ (21) "Premium" means all sums charged, received, or  
28 deposited by a health carrier as consideration for a health plan or the  
29 continuance of a health plan. Any assessment or any "membership,"  
30 "policy," "contract," "service," or similar fee or charge made by a  
31 health carrier in consideration for a health plan is deemed part of the  
32 premium. "Premium" shall not include amounts paid as enrollee point-  
33 of-service cost-sharing.

34 ~~((+23+))~~ (22) "Review organization" means a disability insurer  
35 regulated under chapter 48.20 or 48.21 RCW, health care service  
36 contractor as defined in RCW 48.44.010, or health maintenance  
37 organization as defined in RCW 48.46.020, and entities affiliated with,

1 under contract with, or acting on behalf of a health carrier to perform  
2 a utilization review.

3 ~~((+24))~~ (23) "Small employer" or "small group" means any person,  
4 firm, corporation, partnership, association, political subdivision,  
5 sole proprietor, or self-employed individual that is actively engaged  
6 in business that ~~((, on at least fifty percent of its working days  
7 during the preceding calendar quarter,))~~ employed an average of at  
8 least two but no more than fifty ~~((eligible))~~ employees, ~~((with a  
9 normal work week of thirty or more hours, the majority of whom were  
10 employed within this state, and))~~ during the previous calendar year and  
11 employed at least two employees on the first day of the plan year, is  
12 not formed primarily for purposes of buying health insurance, and in  
13 which a bona fide employer-employee relationship exists. In  
14 determining the number of ~~((eligible))~~ employees, companies that are  
15 affiliated companies, or that are eligible to file a combined tax  
16 return for purposes of taxation by this state, shall be considered an  
17 employer. Subsequent to the issuance of a health plan to a small  
18 employer and for the purpose of determining eligibility, the size of a  
19 small employer shall be determined annually. Except as otherwise  
20 specifically provided, a small employer shall continue to be considered  
21 a small employer until the plan anniversary following the date the  
22 small employer no longer meets the requirements of this definition.  
23 ~~((A self-employed individual or sole proprietor must derive at least  
24 seventy five percent of his or her income from a trade or business  
25 through which the individual or sole proprietor has attempted to earn  
26 taxable income and for which he or she has filed the appropriate  
27 internal revenue service form 1040, schedule C or F, for the previous  
28 taxable year except for a self-employed individual or sole proprietor  
29 in an agricultural trade or business, who must derive at least fifty-  
30 one percent of his or her income from the trade or business through  
31 which the individual or sole proprietor has attempted to earn taxable  
32 income and for which he or she has filed the appropriate internal  
33 revenue service form 1040, for the previous taxable year.))~~ A self-  
34 employed individual or sole proprietor who is covered as a group of one  
35 on the day prior to June 10, 2004, shall also be considered a "small  
36 employer" to the extent that individual or group of one is entitled to  
37 have his or her coverage renewed as provided in RCW 48.43.035(6).

1        (~~(25)~~) (24) "Utilization review" means the prospective,  
2 concurrent, or retrospective assessment of the necessity and  
3 appropriateness of the allocation of health care resources and services  
4 of a provider or facility, given or proposed to be given to an enrollee  
5 or group of enrollees.

6        (~~(26)~~) (25) "Wellness activity" means an explicit program of an  
7 activity consistent with department of health guidelines, such as,  
8 smoking cessation, injury and accident prevention, reduction of alcohol  
9 misuse, appropriate weight reduction, exercise, automobile and  
10 motorcycle safety, blood cholesterol reduction, and nutrition education  
11 for the purpose of improving enrollee health status and reducing health  
12 service costs.

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